

IN-DEPTH

Lending And Secured Finance

CHINA

LEXOLOGY



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In-Depth: Lending and Secured Finance (formerly The Lending and Secured Finance Review) is a global survey of the most consequential developments in the corporate lending and secured finance markets in each jurisdiction, including key challenges and opportunities facing market participants. Among other things, it addresses prevailing market conditions and regulatory changes; tax considerations; credit support and subordination; loan trading; and an outlook for future developments.

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China

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Introduction

In recent years, China's corporate lending market has evolved into a dynamic and rapidly growing sector. According to the People's Bank of China (PBoC), renminbi-denominated loans increased by 18.09 trillion yuan in 2024, indicating robust growth in credit supply.^[1] Among all renminbi-denominated loans, China's domestic syndicated loan balance grew from 8.52 trillion yuan at the end of 2019 to 16.03 trillion yuan by the end of 2023, marking an increase of 88.15 per cent over the five-year period. The proportion of syndicated loan balance to total corporate loan balance steadily increased from 11.88 per cent at the end of 2019 to 14.53 per cent by the end of 2023. In 2023, the total financing amount of newly signed syndicated loan contracts in the domestic market reached 6.17 trillion yuan, representing a growth of approximately 22.91 per cent compared to 2019.^[2]

In terms of the documentation used for syndicated loans in China, the standardised terms formulated by the Asia Pacific Loan Market Association (APLMA) are widely used for cross-border syndicated loans and the terms formulated by the China Banking Association (CBA) are widely used for onshore syndicated loans in China. Both the APLMA and CBA standardised terms have largely mirrored the structure and terms of the Loan Market Association version.

The primary providers of syndicated loans in China are commercial banks, and in particular both Chinese and foreign funded banks have currently become more active in offering cross-border syndicated loans. Non-banking financial institutions or various funds are less prominent in the syndicated loan market in China.

In general, the syndicated loans in China range from short term (one to three years) for working capital to long term (five to ten years) for infrastructure. The applicable interest rates are typically based on the borrower's creditworthiness, the lending rate policies of PBoC, and the contractual terms negotiated in the loan agreement. For fee charge arrangements, members in a syndicate will typically charge arrangement fees, underwriting fees, agency fees and commitment fees. In recent years, there has been a marked shift toward risk-based pricing and more flexible fee structures, driven by increasingly diverse borrower needs and intensified competition among lenders. These developments reflect the growing maturity of China's syndicated loan market and its gradual alignment with international practices.

Year in review

Market conditions and deal activity

China's corporate borrowers arranged approximately US\$36.8 billion in international syndicated loans in 2024, representing a slight year-on-year decline of 1.4 per cent.^[3] This drop was primarily driven by persistently high offshore borrowing costs, which led many borrowers to pivot back to the domestic market where interest rates remained comparatively low.

In terms of deal types, 2024 saw a growing number of ESG-linked financings and green project loans. One standout deal was the successful arrangement of a US\$600 million green syndicated loan led by Bank of China for BOCOM Leasing Co, Ltd. This marked the first deal a Chinese bank acted as the sole mandated lead arranger for a foreign currency syndicated loan initiated by a non-bank financial institution. It also represented the largest green loan transaction to date in China's financial leasing sector.^[4]

Key regulatory developments affecting lending market and documentation terms

In February 2024, NFRA issued the amended *Measures for the Administration of Fixed-Asset Loans* (《固定资产贷款管理办法》) and the *Measures for the Administration of Working Capital Loans* (《流动资金贷款管理办法》). These two measures add restrictions on the use of funds of working capital loans and fixed-asset loans, clarify the loan tenor, extension and repayment requirements, update the thresholds of entrusted payment and provide for mandatory representations and undertakings to be made by the borrower.

In September 2024, NFRA released the *Measures for the Administration of Syndicated Loan Business* (《银团贷款业务管理办法》) (The Syndicated Loan Measures) with the aim to align China's syndicated loan market with international practices. It provides key regulatory requirements on the cap of tranches (not exceeding three tranches) in a single syndicated loan, mandatory role for agents, syndicated loan transfer and charging of fees, and also permits lower minimum commitment (for sole arranger, from 15 per cent to 30 per cent; where there is a co-arranger or deputy arranger, 10 per cent, and the maximum commitment of each lender must not exceed 70 per cent).

All the above newly introduced regulatory requirements should be properly addressed in loan documentations.

Basel III – capital adequacy requirements

China has been actively implementing the Basel III international regulatory standards for banks, and the implementation has been phased in over several years. Specifically, the *Administrative Measures for Management of Capital of Commercial Banks* (《商业银行资本管理办法》) has provided the following minimum capital adequacy ratios requirements: Common Equity Tier 1 (CET1) capital ratio must not fall below 5 per cent; Tier 1 capital ratio shall be at least 6 per cent; and the total capital adequacy ratio must be no less than 8 per cent. In addition to these minimum requirements, banks are required to maintain a capital conservation buffer equal to 2.5 per cent of risk-weighted assets, which must be met with CET1 capital, and a countercyclical capital buffer may be imposed based on macroeconomic conditions and systemic risks.

Banks designated as domestic systemically important banks (D-SIBs) are subject to additional capital requirements based on their classification. According to the *Additional Regulatory Rules for Systemically Important Banks (Trial)* (《系统重要性银行附加监管规则(试行)》), D-SIBs are categorised into five groups, with corresponding additional capital requirements of 0.25 per cent, 0.5 per cent, 0.75 per cent, 1 per cent, and 1.5 per cent. If a bank is also designated as a global systemically important bank, the higher capital requirement shall apply, without double counting.

Developments in sanctions laws and impact on lending and finance

China has been actively building its legal framework to counteract foreign sanctions and extraterritorial measures it deems unjustified. In recent years, China has enacted the Anti-Foreign Sanctions Law (AFSL), established an Unreliable Entity List (UEL), and implemented a blocking statute to counter foreign sanctions and extraterritorial measures it views as harmful. The AFSL allows for countermeasures against entities involved in discriminatory sanctions, while the UEL targets foreign entities harming China's interests, and the Blocking Statute prohibits compliance with blocked foreign measures to protect Chinese entities and individuals.

These anti-sanctions measures increase compliance risks for lenders having operation or dealings in China due to conflicting legal requirements in China and home jurisdictions of lenders. Lenders also face restrictions on transactions with targeted entities (e.g., UEL enlisted entities), necessitating enhanced due diligence on borrowers. Furthermore, the enforceability of loan agreements and security could be challenged if actions are seen as complying with blocked foreign measures, requiring lenders to navigate complex and overlapping sanctions regimes.

Developments in anti-corruption laws and impact on lending and finance

There are no material changes to anti-corruption laws in China recently, but China has maintained a strong focus on combating corruption, with intensified efforts, particularly within the financial sector. The anti-corruption campaign has resulted in stricter oversight of financial institutions' internal control mechanisms, compliance programs, and risk management frameworks. The increased scrutiny and risk of being implicated in corruption cases lead to more cautious lending practices by financial institutions.

Reform, replacement and regulation of benchmarks currently in train

China has been actively reforming and strengthening its financial benchmark system, a critical undertaking driven by global movements away from interbank offered rates like LIBOR and a domestic push towards more market-oriented interest rate mechanisms. In 2019 PBoC designated the Loan Prime Rate (LPR) as the new lending benchmark for new renminbi-denominated loans in China. The LPR is calculated and published by the National Interbank Funding Centre based on submissions from a panel of commercial banks. These submissions are linked to the interest rate of the medium-term lending facility and incorporate a spread that reflects market supply and demand and borrower risk premiums. The reform to the LPR mechanism was a significant step towards making lending rates more market-driven and improving the transmission of monetary policy.

Tax considerations

Stamp duty

Only specified agreements/documents are subject to stamp duty in China. A loan agreement entered into between any financial institution as the lender and non-financial institution as the borrower is subject to stamp duty payable by each party to the agreement at the rate of 0.005 per cent of the principal amount, and a loan agreement between financial institutions or non-financial institutions (e.g., interbank loans, inter-company loans) is not subject to stamp duty.

Notably, from 1 January 2023 to 31 December 2027, a loan agreement with a small or micro-sized enterprise as the borrower, which shall be determined based on the *Standards for the Classification of Small and Medium-sized Enterprises* (《中小企业划型标准规定》), shall be exempt from stamp duty.

Security documents and loan trading documentation are not subject to stamp duty.

Withholding tax

Borrowers in China are generally required to deduct withholding tax on interest payments made to non-resident foreign lenders. In the absence of a tax treaty, the standard withholding tax rate is 10 per cent. Where applicable, the tax rate may be reduced under a double tax treaty between China and the lender's jurisdiction, provided the procedural requirements for claiming the treaty benefit are satisfied.

Value added tax

Where a non-resident foreign lender is deemed to provide loan services in China, an additional 6 per cent value added tax (VAT) is generally required to be deducted by borrowers in China from the interest payments made to such non-resident foreign lenders, unless the lenders can establish the case to competent tax authority that the loan proceeds are solely used in offshore thus no loan services are provided into China.

Notably, from 1 February 2019 to 31 December 2027, the provision of zero-interest loans among intra-group members is exempt from VAT.

Foreign Account Tax Compliance Act

In June 2014, the Chinese government reached an agreement in substance with the United States on the terms of a Model 1 inter-governmental agreement (IGA). However, the China-US IGA has not been signed, and there is no mandatory obligation under Chinese law to implement the Foreign Account Tax Compliance Act (FACTA). However, as practical guidance, CBA has facilitated discussions among member banks, including Chinese and foreign funded banks, and provided internal guidelines to them on navigating the compliance with of FATCA.

Currently Chinese financial institutions have largely moved towards complying with FATCA's requirements, often in parallel with the OECD's Common Reporting Standard. In practice, the loan documentations for onshore loan transactions (e.g., the CBA standard terms or each domestic bank's in-house template) do not incorporate FATCA specific terms, but the loan documentations for cross-border loans will typically include FATCA specific terms, such as the obligation of the borrower to provide necessary information and documentation to the lender for FATCA compliance, representations and warranties from

the borrower regarding their tax status and compliance with FATCA-related information requests, and the allocation of risk related to FATCA withholding tax.

Credit support and subordination

Security

China has developed a comprehensive legal framework for taking security over various types of assets, primarily governed by the *Civil Code of the PRC* (《中华人民共和国民法典》, Code). The creation and perfection of security interests rely on written contracts and state-operated registration systems to ensure enforceability against third parties and establish priority. The following is a brief overview of common methods of taking security over different asset types in China:

Mortgage

Applicable collaterals: a mortgage can be created over real estate and movable assets, including: (1) buildings and other things attached to the land; (2) the right to use a lot of land for construction purposes; (3) the right to use the sea areas; (4) production equipment, raw materials, work in process, and finished products; (5) buildings, vessels, and aircraft under construction; (6) vehicles for transport; and (7) other property not prohibited by laws or administrative regulations from being mortgaged. Mortgage over these collaterals is usually used in various project finance and other mid-long term lending.

Creation and perfection:

1. Real estate: a mortgage over real estate (including properties under construction) is created through a written mortgage contract between the mortgagor (typically the owner of the real estate) and the mortgagee, and upon registration with the local real estate registration authority (such as local planning and natural resources bureau).
2. Tangible moveable property: for tangible moveable property such as equipment, vehicles, and aircraft, a mortgage is created upon execution of the mortgage contract, and perfection is achieved by the following registrations:
 - Machinery, equipment, inventory, and other tangible moveable property: registration with the Credit Reference Centre of PBoC (CCRC).
 - Ships: registration with the local maritime registry.
 - Aircraft: registration with the Civil Aviation Administration of China.
 - Vehicles: registration with the local vehicle registry.

Pledge

Applicable Collaterals: A pledge can be created over tangible movable property, as well as intangible assets and contractual rights outlined as follows: (1) bills of exchange,

promissory notes, and checks; (2) bonds and certificates of deposits; (3) warehouse receipts and bills of lading; (4) transferable fund shares and equity; (5) transferable proprietary rights consisted in intellectual property such as the right to the exclusive use of registered trademarks, patent rights, and copyrights; (6) existing and after-acquired accounts receivables; and (7) other proprietary rights that may be pledged in accordance with the provisions of laws and administrative regulations. Pledge over these collaterals are often used in trade finance and among others, account receivables pledge is more popular in recent years.

Creation and perfection:

1. General requirement: for a pledge over tangible movable property, a pledge is created upon the transfer of the possession of such property to the pledgee; for a pledge over intangible assets and contractual rights, the pledge is created upon the execution of relevant pledge contract, and the transfer of possession of relevant certificate to right (if any) to the pledgee, or the registration with competent authority (if no certificate to right).
2. Contractual rights and accounts receivable: registration with CCRC.
3. Shares and financial instruments: (1) unlisted shares: registration with local Administration for Market Regulation; (2) listed shares: registration with the China Securities Depository and Clearing Corporation Limited; and (3) bonds, fund units, and other centralised registered financial instruments: registration with relevant clearing or registration authority.
4. Intellectual property rights: registration with the China National Intellectual Property Administration.
5. Deposit/cash account: the pledge over the cash account in favour of the pledgee takes effect when: (1) a written pledge contract is duly signed; (2) the account is specifically designated for the pledge purpose; and (3) the creditor/pledgee obtains actual control over the account or the funds are transferred into the account opened in the name of the pledgee.

Lien

Applicable collaterals: tangible movable property.

Creation and perfection: lien is a statutory right provided under the Civil Code. The beneficiary shall lawfully take possession of the property, otherwise it will not be entitled to the lien over the property. No perfection is required.

Cross-border security registration

Under Chinese laws, two types of cross-border security are subject to mandatory registration with the State Administration of Foreign Exchange (SAFE), namely: (1) Nei Bao Wai Dai, where the security provider is a Chinese onshore entity and both the debtor and creditor are offshore entities; and (2) Wai Bao Nei Dai, where the security provider is an offshore entity and both the debtor and creditor are located in China. Although the SAFE registration is not prerequisite for the validity of the security, the enforcement proceeds

of the security may not be able to be remitted into or out of China without the SAFE registration.

Corporate authorisation and public disclosure

To ensure the security is legally binding and enforceable against the security provider, the secured party should duly check the board resolutions or shareholder(s) resolutions (as applicable) and their consistency with the articles of association of the security provider, and where the security provider is a listed company or a subsidiary of a listed company whose shares are listed on a Chinese stock exchange, the secured party should further ensure the provision of security is properly disclosed pursuant to the stock exchange's rules.

Security over all or substantially all assets

Under Chinese law, it is generally not possible to create a single, overarching security interest akin to a 'floating charge' in common law jurisdictions that automatically covers all or substantially all present and future assets of a company under a single security document that is perfected by a single registration. While a single security document can list various types of assets as collateral, separate perfection steps are required for each asset type according to the specific registration requirements outlined above. The establishment of CCRC has significantly streamlined the process for taking security over many types of movable assets and rights under a single registration system. However, real estate, certain specific movable assets (vehicles, ships, aircraft), shares, and intellectual property still require registration in their dedicated registries.

Tax or Other Costs

No tax (including stamp duty) is payable for the creation or perfection of any security interest, but registration authorities may charge fees for the registration of security interest.

Guarantees and other forms of credit support

The key alternative forms of credit enhancement in China include guarantees, quasi-security, negative pledge undertakings and credit insurance.

Guarantees

Chinese law recognises two types of guarantees:

1. General guarantee: the guarantor is liable only if the lender has exhausted all legal remedies against the borrower and the borrower is still unable to satisfy the debt. Where there is no clear agreement between the guarantor and the secured party, the default guarantee will be general guarantee. This is generally not acceptable to lenders.
- 2.

Joint and several guarantee: the guarantor and the borrower are jointly and severally liable, meaning the lender can demand performance from either the borrower or the guarantor (or both simultaneously) upon the borrower's default. This is more commonly used in lending transactions.

Creation and perfection: guarantee is created through a valid guarantee contract.

Cross-border security registration, corporate authorisation and public disclosure: the provision of guarantee is subject to the same requirements on cross-border security registration, corporation authorisation and public disclosure with respect to provision of security.

Quasi-security

Common forms of quasi-security in China are finance lease, retention of title, and factoring.

Creation and perfection: in general, each quasi-security is created through a valid written contract and perfected against bona fide third parties by way of registration with CCRC.

Negative pledge undertakings

Negative pledge undertaking is prevalent in China's loan market, which requires the borrower to undertake not to create or permit to exist any security interest over its assets (or a specific class of assets) in favour of any other creditor without the express prior consent of the lender.

Credit insurance

Credit insurance has become an increasingly common feature in cross-border financing transactions, particularly in the context of project finance under the Belt and Road Initiative. The China Export & Credit Insurance Corporation (commonly known as Sinosure) plays a central role. As an independent legal entity, Sinosure provides export credit insurance that protects against non-payment risks in foreign trade and overseas investments. It has been especially active in supporting Chinese companies and financial institutions involved in cross-border projects, offering risk mitigation tools that improve the creditworthiness of borrowers and enhance financing feasibility for projects abroad.

Priorities and subordination

Priorities of secured creditors

The ranking and priority of competing security interests in China are primarily determined by the type of security and, crucially, the order of registration. The Civil Code and the *Interpretation of the Supreme People's Court on Application of the Security System under the Civil Code of the PRC* (《最高人民法院关于适用〈中华人民共和国民法典〉有关担保制度的解释》) govern these rules.

Principle of registration priority: for security interests that require registration for creation or perfection (such as mortgage over real estate and movable property, pledge over shares,

accounts receivable, and intellectual property), priority is generally determined by the time of registration. The security interest registered first in time will have priority over subsequently registered security interests in the same asset. A security interest that is validly created but not duly perfected/registered is generally not enforceable against bona fide third parties and will rank behind perfected/registered security interests.

Absolute priority of liens: regardless of whether the mortgage or pledge has been registered, the lienor always has the first priority over the mortgage or pledge over the same collateral in the possession of the lienor.

Subordination of debt

Debt subordination in China typically refers to the contractual agreement by a creditor to rank their debt lower in priority for repayment than the debt owed to another creditor of the same borrower. This is primarily effected through a contractual subordination agreement between the senior creditor, the junior creditor, and the borrower. While such contractual arrangement is generally recognised and enforceable under PRC laws, it cannot prevail over the statutory repayment order under the *Enterprise Bankruptcy Law of the PRC* (《企业破产法》 - the Bankruptcy Law), where all unsecured creditors shall rank *pari passu*.

Legal reservations and opinions practice

Significant legal limitations on validity and enforceability

Corporate benefit

The *Company Law of the PRC* (《公司法》 - the Company Law) generally requires the transactions entered into by a company (whether authorised by way of shareholder resolutions or board resolutions), including entering into loan agreements or providing security, to be for the benefit of the company. While the concept of corporate benefit is not as extensively litigated in China as in some other jurisdictions, transactions that are clearly not for the company's benefit but are detrimental to its interests (e.g., providing guarantees for related parties without proper corporate procedures or consideration) could potentially be challenged by shareholders, creditors, or in insolvency proceedings, potentially affecting the validity and enforceability of the arrangement.

Financial assistance

Article 163 of the Company Law provides that no company may provide gift, loan, security or other financial assistance for others to obtain the shares of the company or the parent company thereof, with only two exceptions: (1) for the company's implementation of an employee stock ownership plan; and (2) such loan or security is provided in the interests of such company, the accumulative balance of which does not exceed 10 per cent of the total issued share capital of the company, and upon the shareholders' resolution, or board

resolution (adopted by at least two thirds of all the directors) in accordance with either the articles of association or authorisation of the shareholders' meeting of such company.

Notably, the above statutory restriction and exceptions apply to companies limited by shares (有限公司), but not limited liability companies (有限责任公司).

Transactions vulnerable in insolvency and hardening periods

The Bankruptcy Law includes provisions that allow an administrator or the court to challenge and potentially claw back certain transactions entered into by the debtor prior to the commencement of insolvency proceedings. The voidable transactions include the following:

1. Within the one-year hardening period prior to the court's acceptance of the bankruptcy application:
 1. Transfers of property for no consideration.
 2. Transactions at undervalue (where the consideration received is significantly less than the value provided by the debtor).
 3. Providing security for unsecured debts.
 4. Premature repayment of undue debts.
 5. Waiver of claims.
2. Within the six-month hardening period prior to the court's acceptance of the bankruptcy application: preferential payment made to any creditor where the debtor meets the insolvency conditions stipulated in Article 2 of the Bankruptcy Law (namely, the failure to pay due debts combined with the situation where the debtor's assets are insufficient to satisfy all liabilities or the debtor is clearly incapable of doing so), unless such payments benefit the debtor's estate.
3. Regardless of the hardening period restriction:
 1. Concealment or transfer of property to evade debts.
 2. Fabrication of debts or acknowledgement of fictitious debts.

Ultra vires

While the concept of *ultra vires* (actions beyond a company's corporate capacity) has been significantly narrowed under the current Company Law, particularly regarding the validity of contracts, it is still important to ensure that the borrower and any security providers have the necessary corporate power and authority to enter into the loan and security documents in accordance with their articles of association and relevant laws, in particular for companies to provide security, requisite resolutions and even public announcement on Chinese stock exchanges (for listed companies and their subsidiaries) will be needed to ensure the validity and enforceability.

Regulatory approvals and restrictions

Certain types of lending and secured transactions may require specific regulatory approvals or filings. For instance, cross-border loans to Chinese entities are subject to foreign debt registration with SAFE. Cross-border loans with more than one year tenor to Chinese entities or their subsidiaries are subject to filing with the National Development and Reform Commission (NDRC). Providing security could be subject to the cross-border security registration with SAFE. Failure to secure these registrations or filings can affect the ability to remit funds into or out of China.

Customary qualifications

The legal opinion on validity and enforceability is also subject to certain customary qualifications, including the limitation on the action period, which is generally three years which begins to run when the infringed party knows or ought to know that its rights have been infringed, and maximum of twenty years from the actual infringement of rights.

Legal opinions practice

In loan transactions in China, legal opinions play a crucial role in providing comfort to lenders regarding the capacity and authority of the borrower and security providers, the validity and enforceability of the transaction documents, and the perfection and priority of security interests.

Typically, lender's counsel delivers the legal opinions in a financing transaction addressed to lenders. The borrower's counsel may deliver the legal opinions upon borrower's request, for example, for filing with NDRC as part of the requisite filing materials.

Legal opinions are typically addressed to the lenders (including the agent, if applicable) participating in the transaction. In syndicated deals, the opinion is usually addressed to the agent on behalf of the syndicate. The opinions are generally disclosed to all syndicate members, and can be disclosed to such persons as required by regulator or applicable laws.

There is no recent legal or regulatory development that has had an impact on opinions practice in China.

Choice of law and enforcement of foreign court judgments

Choice of law

Chinese courts will generally uphold a choice of foreign governing law in contracts with a 'foreign element', provided that the choice is made by the parties through agreement and does not violate mandatory provisions of Chinese law or public interest. A contract is considered to have a 'foreign element' if it involves foreign parties, the subject matter is outside China, or the legal fact that causes the civil relation to create, change or terminate occurs outside China. A contract without 'foreign element' must apply Chinese law.

However, security documents creating rights over assets located in China generally should be governed by Chinese law as a mandatory requirement for most types of assets, for example, for pledge over shares, account receivables or contractual rights, the law of the jurisdiction where the pledge is created must apply, and it is generally understood that China should be the place where the pledge is created when the collateral is located in China.

Enforcement of foreign judgments

Foreign judgments can be enforced either in accordance with bilateral or multilateral treaties on enforcement of foreign judgments, or in the absence of a treaty, based on the principle of reciprocity between China and foreign jurisdictions. The process of enforcement of foreign judgments involves a recognition phase by a Chinese court, and the foreign judgment will be reviewed on certain grounds, including compliance with basic principles of Chinese law and public interest. The enforcement process itself, after recognition is granted, follows Chinese civil procedure.

Bilateral or multilateral treaties: China has entered into bilateral treaties on judicial assistance with a number of countries, such as France, Italy, Spain, Poland, Greece, Russia, South Korea, etc., which provide a basis for recognition and enforcement. However, China is not a party to any multilateral treaty on enforcement of foreign judgments.

Principle of reciprocity: recent years have seen significant positive developments towards a more open approach by China in terms of the application of principle of reciprocity. The recent judicial cases have signaled a shift from a strict 'de facto' reciprocity (requiring proof of a prior successful enforcement of a Chinese judgment in the foreign jurisdiction) to a more flexible 'presumed' or 'legal' reciprocity (where reciprocity may be found if the foreign law allows for the recognition and enforcement of Chinese judgments, even if there is no precedent).

Loan trading

The trading of loan participations in China primarily occurs through assignment and novation, while sub-participation and synthetic methods are less prevalent due to regulatory concerns. Set out below is a brief overview of these methods, each with its regulatory requirements and implications for the transfer of security and guarantees under Chinese laws.

Assignment

The trading of loan participations via assignment is the most common method for transferring existing loan assets in China. It is expressly permitted under Chinese law and extensively regulated.

Legal basis and regulatory requirements

Articles 545 and 546 of the Civil Code provide the fundamental legal framework for the assignment of contractual rights (including the assignable claims from loan participations), and require notification to the debtor in order to have binding effect of such assignment upon the debtor.

For banking financial institutions, the assignment of loan participation is subject to the regulatory requirements under the *Notice of China Banking Regulatory Commission on Further Regulating the Credit Asset Transfer Business of Banking Financial Institutions* (《关于规范信贷资产转让及信贷资产类金融产品转让有关问题的通知》, Circular No. 102) and *Syndicated Loan Measures*, which include the following:

Principle of authenticity and clean assignment: the assignment must be genuine sales of assets, and free from any explicit or implicit repurchase obligations. The risks and benefits associated with the credit asset must be fully transferred to the assignee, and the assignee shall enter into an agreement to confirm and document the claim and debt relationship with the borrower.

Principle of entirety: the principal must be assigned in whole together with the accrued interest thereon in entirety, except for the syndicated loans, either a portion of or the whole of the outstanding principal can be assigned together with the accrued interest thereon in entirety.

Right of first refusal: when assigning loan participation in syndicated loans, the assignor must give other syndicate members the first right of refusal to such participation on the same terms as offered to a potential lender that is not an existing lender in the syndicate.

Registration and reporting requirement: any assignment of loan participation must be registered with the Credit Assets Registration Centre (CARC) before the assignment if conducted on the CARC platform, or be reported to CARC after the assignment if conducted off the CARC platform. Notably, any assignment of loan participation in syndicated loans must be registered with CARC prior to the assignment and be conducted on the CARC platform.

Obtaining the benefit of security/guarantee

Articles 547 and 696 of the Civil Code expressly provides that a valid assignment of loan debt results in the automatic transfer of the benefit of related security and guarantees (being the rights accessory to the principal debt) to the assignee, regardless of the failure to handle the transfer registration or transfer the possession of relevant collateral, provided that the assignment should be notified to the guarantor for the assignment to take effect and bind upon the guarantor, and that the original lender and the guarantor did not expressly agree on the prohibition of assignment. That said, as a regulatory requirement under Circular No. 102 and also to better protect the assignee from bona fide third parties, it is still necessary to update the relevant security registrations (e.g., for mortgages, pledges) to reflect the assignee as the new secured party.

Novation

The trading of loan participations via novation is feasible and permitted, but less frequently used for routine loan trading compared to assignment, primarily due to the requirement for

borrower consent. It is typically employed when the incoming lender needs to assume the original lender's obligations (e.g., undrawn commitments) or when a complete substitution of parties is desired.

Legal basis and regulatory requirements

Articles 555 and 556 of the Civil Code govern the novation of contract by transferring both contractual rights and obligations, requiring consensus among all parties involved (original lender, new lender and borrower), and the same set of provisions under the Civil Code on assignment of claims (i.e., the notification requirement to the debtor) and transfer of debts shall apply to the novation.

For banking financial institutions, where the novation involves drawn commitments, the same regulatory requirements for the assignment of loan participation under Circular No. 102 and Syndicated Loan Measures will apply to the novation, including adherence to principles of authenticity and clean assignment, principle of entirety, right of first refusal and the registration/reporting obligations.

Obtaining the benefit of security/guarantee

The same set of rules for obtaining the benefit of security/guarantee applicable to the assignment will equally apply to novation.

Sub-participation

The trading of loan participation via sub-participation is even less used in the China market, due to concerns of its potential violation of the principle of clean assignment under Circular No. 102 for banking financial institutions.

Legal basis and regulatory requirements

The principle of clean assignment requires the full transfer of the credit assets to the assignee, and the assignee shall enter into an agreement to confirm and document the claim and debt relationship with the borrower. However, under a typical sub-participation transaction, the credit asset is still booked with the grantor (participation seller) but not transferred to the participant (participation buyer), and the contractual agreement on sub-participation only exists between the grantor and the participant, there would be no direct contract between the borrower and the participant, thus there is a potential violation of the principle of clean assignment. For the above reasons, sub-participation is not commonly used in the Chinese market.

With the above being said, there has also been discussion in the market that, since the sub-participation does not involve a transfer of the underlying loan asset or a change in the legal relationship with the borrower, the specific stringent regulatory requirements for credit asset transfers applying to assignment and novation may not apply in the same direct manner for sub-participation.

Obtaining the benefit of security/guarantee

The participant does not obtain direct legal ownership of the loan debt or the benefit of the security interests or guarantees granted by the borrower to the grantor. These remain with the grantor. The participant's recourse is contractual against the grantor, not the borrower. In an enforcement scenario, the grantor enforces the security and guarantees, and the participant receives a share of the proceeds from the grantor according to the participation agreement. Where the participation agreement provides that the relevant portion of loan participation will be assigned to the participant upon the default of the borrower, then the participant will be able to obtain the benefit of the security interests or guarantees accessory to the relevant principal debt upon the assignment.

Synthetic methods

Common synthetic methods for loan trading, such as credit default swap (CDS), credit risk mitigation agreement (CRMA), are feasible in the Chinese market.

Legal basis and regulatory requirements

The trading of CDS and CRMA is governed by the *Business Rules for Credit Risk Mitigation Instruments in the Interbank Market* (《银行间市场信用风险缓释工具业务规则》), the related implementing rules and regulatory requirements provided by PBoC, NFRA, and the National Association of Financial Institutional Investors (NAFMII), among other competent regulators. The key regulatory requirements include the filing with NAFMII to be a core dealer or a general dealer, entering into the NAFMII Master Agreement for Financial Derivative Transactions, and reporting the executed transactions to NAFMII. For banking financial institutions, they will also need to secure the derivatives trading licence from NFRA to be able to participate in the trading of CDS or CRMA.

Obtaining the benefit of security/guarantee

Synthetic methods transfer credit risk exposure synthetically; they do not involve the transfer of the underlying loan asset or any associated security or guarantees. The original lender retains the loan and security, and the counterparty in the synthetic transaction has no direct claim on the security.

Special considerations

Not applicable.

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Outlook and conclusions

Despite monetary easing and policy support, China's lending market faces constrained credit growth and fierce competition for high-quality borrowers due to weak demand and geopolitical risks, particularly the China-US tensions, leading lenders to be more selective. Amid this uncertainty, green finance is gaining traction as a significant trend, driven by the government's focus on green development as indicated in the *Report on the Work of the Government* delivered on the 14th National People's Congress in 2025^[5] and the resulting growth in related green financial products.

Further, it is also worth noting that, with the introduction of the Syndicated Loan Measures, the syndicated loan market is expected to see further business innovation opportunities. Looking ahead, as client financing needs increase and syndication models diversify, banks will fully explore the applicable scenarios for tranching and continuously innovate their syndicated loan product portfolios and service models.

Endnotes

- 1 China's yuan loans grow by 18.09 trillion yuan in 2024:https://english.www.gov.cn/archive/statistics/202501/14/content_WS67862cdec6d0868f4e8eecea.html
^ [Back to section](#)
- 2 <https://finance.sina.com.cn/money/bank/yhpl/2025-03-21/doc-ineqkzhr6862138.shtml>
^ [Back to section](#)
- 3 <http://cnfinance.cn/magzi/2025-02/27-34229.html> ^ [Back to section](#)
- 4 https://www.boc.cn/big5/aboutboc/bi1/202409/t20240913_25155173.html ^ [Back to section](#)
- 5 Please refer to the Report on the Work of the Government on the website of the PRC State Council, https://english.www.gov.cn/news/202503/12/content_WS67d17f64c6d0868f4e8f0c10.html
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